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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI, BY INDEPENDENT NATURAL GAS ASSOCIATION OF AMERICA, AMERICAN PETROLEUM INSTITUTE, INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA AND MID-CONTINENT OIL & GAS ASSOCIATION, AMICI CURIAE.

SUPREME COURT OF THE UNITED STATES

October Term, 1946.

No. 733.

INTERSTATE NATURAL GAS COMPANY, INCORPORATED, a Corporation, PETITIONER,

v.

FEDERAL POWER COMMISSION, LOUISIANA PUBLIC SERVICE COMMISSION, CITY OF NEW ORLEANS, LOUISIANA, CITY OF BATON ROUGE, LOUISIANA, RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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This brief is presented by Independent Natural Gas Association of America, American Petroleum Institute, Independent Petroleum Association of America and Mid-Continent Oil & Gas Association, *Amici Curiae*, with consent of all parties as authorized by paragraph 9 of Rule 27 of this Court.

STATEMENT OF INTEREST.

Independent Natural Gas Association of America, a corporation, represents in its membership a large number of persons and corporations engaged in the production and gathering of natural gas and the transportation and sale

thereof. The gas so produced, gathered or transported, is sold in the state of origin, or in other states, to others for resale, immediately after the production thereof or after the transportation thereof, interstate or intrastate. This Association has a membership of approximately 1700, in twenty-three states, including all the natural gas-producing states and most of the natural gas-consuming states. Such membership includes producers, transporters, land owners, royalty owners, natural gas companies under the Act, consumers and others. It is representative of all phases of the natural gas industry, including production, transportation, sale and consumption.

American Petroleum Institute, a corporate organization, represents generally and extensively all branches of the oil and gas industry. Its membership, consisting of about 5,000 members of the industry, reaches into every state of the Union and includes producers of crude petroleum and natural gas, refiners of petroleum and its products, extractors of natural gas gasoline, transporters of crude petroleum, its products and natural gas through pipelines, owners of oil and gas royalties, land owners, and many others engaged in one or more branches of the oil and gas industry.

Independent Petroleum Association of America, a corporation, is a national association of independent producers, transporters and refiners of crude petroleum and natural gas, land owners, owners of oil and gas royalties, and others engaged in some one or more activities connected with the oil and gas industry. Every oil and gas producing state in the nation is represented in the Association, the membership of which is in excess of 6,000.

Mid-Continent Oil & Gas Association, unincorporated ~~a corporation~~, is an oil and gas trade association, with more than 3,000 members, representing and serving all branches of the petroleum and related businesses, and particularly a majority of the oil and gas producers in the states of Kansas, Oklahoma, Texas, New Mexico, Arkansas, Louisiana, Mississippi and Alabama.

These four nation-wide organizations together represent all branches and virtually all units of the oil and gas industry throughout the United States.

Because of the very close inter-relation in the discovery, production, transportation and sale of oil and natural gas, members of the foregoing organizations, aggregating more than 15,000 in number, and particularly the natural gas production by thousands of producers who sell their production *locally*, directly or indirectly, to interstate pipelines subject to the regulatory authority of the Federal Power Commission, all are actually affected by and seriously involved in the jurisdictional question here at issue.

Such issue arises from the assertion and exercise by the Commission, with the approval of the Court below, of rate-regulatory "jurisdiction" over the production, gathering, outright sales and completed deliveries of natural gas by petitioner, Interstate Natural Gas Company, *all* of which activities and transactions are fully consummated *locally* in the state and in the field of origin of such gas, the Monroe Field, Louisiana. The purchasers of such gas are three separate and independent interstate pipeline companies, each of which is a "natural gas company" under the Natural Gas Act and regulated as such by the Commission as to the subsequent sales for resale in other states by each of them, respectively, of the gas so *locally* purchased from petitioner and others.[1]

The declared legal foundation of this asserted jurisdiction exercised herein by the Commission rests on the assumed fact that natural gas "moves * * * in a constant flow from the mouths of the wells" where produced to its ultimate destination. According to the Commission, *even after outright local sale and absolute delivery thereof by the producer or gatherer in the field of production*, if such gas thereafter enters, through the separate and independent facilities and operations of the purchaser or others, into the so-called "flow" or "current" of commerce for resale beyond the borders of the state of production, then *the local vendor of such gas*, whether he be the producer or gatherer thereof, is subject to Commission rate-regulatory authority under the Gas Act *(R. V. 1, pp. 82-83)*. That this concep-

1. Re United Gas Pipe Line Co., 3 F.P.C. 402; Re Mississippi River Fuel Corp., 2 F.P.C. 170, 34 P.U.R. (n.s.) 8, 121 F. (2d) 159; Re Southern Natural Gas Co., 3 F.P.C. 822, 1023.

tion of jurisdiction under the Gas Act is both novel and far-reaching, there can be no slightest doubt. Such, nevertheless, is the jurisdictional issue herein joined. The existence of any such authority is not disclosed in the terms or provisions of the Gas Act. On the contrary, such authority is withheld, if the statute means what the language thereof imports and declares. The question has not been presented in any other case. This Court as yet has had no occasion either to consider or to determine it.

JURISDICTION ON REVIEW, OPINIONS BELOW AND FEDERAL STATUTE INVOLVED.

The jurisdiction of this Court is invoked under *Section 347(a) (Section 240, amended) of the Judicial Code (U.S. C.A., Title 28, Section 347(a)); Section 19(b) of the Natural Gas Act (52 Stat. 821; 15 U.S.C.A., Sec. 717r(b)) and Rule 38 of this Court.*

Review on certiorari is sought of the judgment of the Circuit Court of Appeals for the Fifth Circuit *(R. V. 2, pp. 910-948)* affirming a rate reduction order of the Commission *(R. V. 1, pp. 81, 93, 100)* directly applicable to and regulating the price of the *local* "field" sales of natural gas made by petitioner to the pipeline companies aforesaid.

The opinion of the Court of Appeals, Judge Waller dissenting *(R. V. 2, pp. 910-918, 919-927)*, is reported in 156 Fed. (2d) 945. The opinion of the commission *(R. V. 1, pp. 57-80)* is reported in 3 F.P.C. 416, 48 P.U.R. (n.s.) 267.

The statute involved is the Natural Gas Act (52 Stat. 821; 15 U.S.C.A., Sec. 717) and particularly Section 1 thereof, set forth and discussed *infra*.

NECESSITY FOR JUDICIAL REVIEW.

This case is not merely a lawsuit by the petitioning litigant. Here is an issue undetermined by this Court of great "gravity and general importance" involving the meaning attributed to and the application made of a federal statute by a federal administrative agency and by a federal circuit court of appeals, which meaning and application probably, if not certainly, is in conflict with such federal statute. Such

a situation discloses an ample, an impressive and a "special and important" reason which justifies and requires the consideration, the review and the determination thereof by this Court in the normal exercise of a "sound judicial discretion."

QUESTION DISCUSSED IN THIS BRIEF.

The position of *Amici Curiae* upon the facts in this record and the law properly applicable thereto is:

The "field" sales of natural gas made and entirely completed, *locally* in the Monroe Field in the State of Louisiana, by the Interstate Company to the three separate and independent pipeline companies, are not subject to Commission-regulatory jurisdiction under the Gas Act.

STATEMENT OF THE RECORD FACTS.

The uncontroverted facts established by the evidence relevant to the jurisdictional issue herein joined are:

Interstate Natural Gas Company, referred to as "Interstate Company," purchases, produces and gathers substantial quantities of natural gas in the Monroe Field in Louisiana, a portion of which gas is sold and delivered by it to each of three interstate pipeline companies, to-wit, Mississippi River Fuel Corporation, Southern Natural Gas Company, and United Gas Pipe Line Company for the account of Memphis Natural Gas Company *(R. V. 1, pp. 81-83; R. V. 2, pp. 792, 807)*. The natural gas sold to each of such pipeline companies is sold and delivered by Interstate Company within the Monroe Field, Louisiana, at natural field pressures which are substantially below the pressures required for interstate transportation by the three purchasing pipelines *(R. V. 2, pp. 799, 802-3, 806)*. Such natural gas is so sold and delivered by Interstate Company under contract with each of the three pipeline companies. Such contracts and other record evidence disclose that each of the three pipeline companies, after *local* "field" purchase by and delivery to it of such gas, after compression thereof by it and after interstate transmission by it, thereafter in states other than Louisiana sells the gas so purchased to sundry distri-

buting companies for resale by them for ultimate consumption *(R. V. 2, pp. 796-797, 801, 804)*. Each of such contracts stipulates a long-term commitment of sale and purchase in the Monroe Field of production *(R. V. 2, pp. 797, 801, 804)*, thus establishing a continuous course of business between Interstate Company and the three pipeline companies.

Each of the three pipeline companies extended its pipeline transmission system to and into the Monroe Field to receive deliveries in that field of natural gas there *locally* sold and delivered to and purchased by it. Each of the three pipeline companies, at the terminus of its pipeline system in the Monroe Field, also purchases natural gas from producers and gatherers of natural gas other than the Interstate Company, to-wit, Southern Carbon Company and United Carbon Company, *which companies do not own or operate any interstate pipelines or other interstate facilities*, and United Gas Pipe Line Company, one of whose nuinerous pipelines is extended into the Monroe Field. Such purchases from companies other than Interstate Company constitute more than 75 per cent of the "field" purchases in the Monroe Field by each of the three pipeline companies *(R. V. 2, p. 794)*. Furthermore, the deliveries of natural gas by such other selling companies are made to each of the three pipeline companies, respectively, at points virtually identical with the points of delivery of natural gas sold by Interstate Company to such pipeline companies *(Exhibits 6, 43, R. V. 2, pp. 554, 599)*.

Upon metering, *all* the gas so *locally* purchased from and delivered to each of the three pipeline companies by Interstate Company and other vendors in the "field" is commingled by the purchasing pipeline company.

Thereupon, each of the three pipeline companies immediately thereafter, in its own compressor station, compresses (first, through a low-stage unit and again through a high-stage unit) the then commingled gas under high pressures sufficient and adequate to prepare or package it for, and to effectuate, the subsequent interstate transportation thereof by such pipeline company *(R. V. 2, pp. 577-581, 586-598, 619-620)*.

After metering and delivery, there is no evidence, and it is not contended, that Interstate Company has any responsibility for, control over or interest or concern in said gas, its interstate transportation or the subsequent sale or disposition thereof. *In such operations, activities and transactions of the three purchaser pipeline companies, Interstate Company is not a participant in any sense or in any degree at any time.*

Interstate Company, in so far as the sales here in question are concerned, neither owns, operates nor participates in the operation or business of any pipeline crossing the Louisiana boundary. In fact, none of its lines here involved extend outside of the boundaries of the Monroe Field. Admittedly, all such sales and deliveries are made and completed *locally* in the Monroe Field, Louisiana.

THE ORDER OF THE COMMISSION.

All of the jurisdictional findings and conclusions of the Commission material to this issue of Commission-regulatory jurisdiction are:

That "Interstate, as an established course of business, is engaged in the transportation, sale and delivery of natural gas purchased, produced and gathered in the Monroe Field, Louisiana", to the three pipeline companies in question "*at a point near Perryville in the State of Louisiana*" and "*at a point near Guthrie in the State of Louisiana.*" Each "point" of sale and delivery is in the "Monroe Field, Louisiana" *(R., V. 2, p. 911).*

That "the natural gas * * * that is sold and delivered" *locally* in the Monroe Field, Louisiana, to the three pipeline companies "is sold and delivered by Interstate, in each instance," under contracts which disclose that the gas so sold and delivered by Interstate Company and purchased and received by the respective pipeline companies thereafter is to be transported by each of such pipeline companies out of the State of Louisiana, and subsequently in other states sold by each of such pipeline companies to sundry distributing companies for resale, for ultimate public consumption in such states other than Louisiana.

That "the natural gas * * * that is sold and delivered *locally* in the Monroe Field, Louisiana, by Interstate Company to the three pipeline company purchasers "moves in each instant in a constant flow from the mouths of the wells from which it is produced through pipelines belonging to Interstate, to the compressor station of the respective purchaser, and thence through said compressor stations into the pipeline of said respective purchaser and thus into and through states other than Louisiana * * *, all without interruption, and said gas is so destined from the moment of its production" *(R. V. 1, pp. 82-83)*.

Based upon the foregoing findings and conclusions numbered (7), (8) and (9) *(R. V. 1, pp. 82-83)*, the Commission, in its so-called "finding" numbered (10), declared by way of legal conclusion: "The transportation and the sale of natural gas" by Interstate Company locally in the Monroe Field, Louisiana, to the three several interstate pipelines "is, in each instance, the transportation and sale *in* interstate commerce of natural gas for resale for ultimate public consumption * * * and, therefore, subject to the jurisdiction of the Commission" under the Natural Gas Act *(R. V. 1, p. 83)*.

It is significant in this discussion, as will later appear, that the conclusion of law of the Commission (finding No. 10) is made wholly without regard to and independently of the fact that the Interstate Company is in fact a "natural gas company" under the Act, because of other activities and operations of the Company not connected with the sales herein under consideration, to-wit, the transportation and sale of natural gas in interstate commerce for resale, through its interstate transmission pipeline system extending from its De Siard Compressor Station in Monroe Field to and through a portion of the State of Mississippi to Baton Rouge, Louisiana *(R. V. 1, pp. 81-82)*. Neither the Commission nor the Court of Appeals based, or could base, jurisdiction herein on such other regulable and regulated activities and operations. *Panhandle Eastern Pipe Line Co. v. Federal Power Comm.*, 324 U.S. 635, 65 S.Ct. 821, 825; *Connecticut L. & P. Co. v. Federal Power Comm.*, 324 U.S. 515, 65 S.Ct. 749.

The asserted jurisdiction of the Commission exercised herein thus is predicated *solely* upon the assumed legal theory that by reason of the physical fact of "the constant flow" of gas "from the mouths of the wells" through connecting pipelines owned, controlled and operated by others, ultimately "into and through states other than Louisiana," for resale the *local* producer, gatherer and vendor of such gas is engaged *as a matter of law* in "the transportation and sale *in* interstate commerce of natural gas for resale," under the Act. This Commission theory of jurisdiction was applied here even though *in fact all the* activities, operations and transactions participated in by such producer or gatherer, the Interstate Company, are local to and fully performed and carried out in the state and field of production, the Monroe Field, Louisiana.

Under this "constant flow" theory of jurisdiction, *every* local producer or gatherer of gas, of which there are thousands, whose production or any part thereof, through interconnection of facilities, enters directly or indirectly into the interstate pipeline facilities of a "natural gas company," by virtue of that fact also becomes a "natural gas company," subject to Commission rate-regulatory control. And this is true whether such producer or gatherer knows or does not know that the gas produced by him "is destined" by the purchaser thereof for "transportation and sale in interstate commerce * * * for resale."

It is entirely clear, as is developed *infra*, from the structure of the jurisdictional provisions of the Gas Act, as well as of the parallel provisions of the Power Act, and from the entire legislative history of federal regulation of interstate gas and electric utilities, that Congress did not intend to adopt, and did not adopt, in such Acts any such sweeping standard of "interstate commerce." In fact the all inclusive concept of jurisdiction now asserted by the Commission in this case, deliberately was rejected by Congress in the enactment by it of each of said Acts, *although embodied expressly in the Commission drafted and sponsored legislative bills.*

THE OPINION AND JUDGMENT OF THE COURT OF APPEALS.

The Court of Appeals did not accept, and evidently could not accept, the Commission theory of "constant flow from the mouths of the wells" through connecting pipeline facilities ultimately "into and through states other than Louisiana," as the sufficient and lawful foundation for the regulatory authority actually exercised by the Commission over the local "field" operations, properties and sales of Interstate Company here involved. The Court was entirely silent with respect to such jurisdictional "findings" of the Commission.

That Court nevertheless upheld the Commission order on the broad generalization "That they (the local field sales here in question) are sales *in* interstate commerce, we think is settled by the authorities," and therefore "are within its (the Act's) purview." This view the Court several times repeated and on each occasion cited generally the cases of *Missouri v. Kansas Gas Co.* (1924), 265 U.S. 298, 44 S.Ct. 544, 68 L.Ed. 1027; *Public Utilities Commission v. Attleboro Steam & Electric Co.* (1927), 273 U.S. 83, 47 S.Ct. 294, 71 L.Ed. 549. It made no attempt, however, to show that the facts of this record, or any Commission finding, made the principles of law therein declared applicable to this case.

Strangely enough, after declaring "it (the Act) used language removing from any doubt that the Commission was not to have jurisdiction over *properties* used for production * * * or the activities of production and gathering" *(R. V. 2, p. 915)*, the Court of Appeals sought support for its own conclusions from the opinion of Mr. Justice Douglas in the *Canadian River Gas Company* case, 324 U.S. 581, 602-603, 65 S.Ct. 829, 839, where the contrary is specifically declared, to-wit: that the Commission did have jurisdiction over the production and gathering *properties and facilities* because "No exclusion of property used or useful in production of natural gas was made" in the statutory denial of

jurisdiction to the Commission over "the production or gathering of natural gas."[2]

Thus, to the uncontroverted facts the Commission added the legal concept of "constant flow from the mouths of the wells" through connecting but wholly independent facilities of others into the channels of interstate commerce *(R. V. 1, pp. 82-83)*, in order to fashion the purely "local" field sales of petitioner as being "*in interstate commerce*," as that term in *Section 1(b)* of the Act was construed by the Commission.

To the same facts the Court of Appeals added factual assumptions, unsupported by the record or Commission findings and the legal concepts of (1) a *single* interstate enterprise and operation, which is the *Kansas Gas Company* case, and (2) an affiliated interstate enterprise and operation, which is the *Attleboro Steam & Electric Company* case *(R.*

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2. This Court disposed of the Canadian River Gas Company case, supra, by three divergent opinions in which the alignment of the Court was five to four that the Commission does not have jurisdiction over "any direct regulation of that activity." The same opinions, on the basis of eight to one, recognized that "reflecting the production and gathering facilities in the rate base" in fact was the exercise of direct regulation of that activity.

If any "authoritative determination" of "the principles of law involved" was made through "agreement by a majority of the Court" in that case, it was that the Commission does not possess the jurisdiction of "direct regulation over that activity" and that "reflecting the production and gathering facilities in the rate base" was the exercise of direct regulation. Otherwise "the lack of an agreement by a majority of the Court * * * prevents it (the decision in the Canadian case) from being an authoritative determination for other cases." (United States v. Pink, 315 U.S. 203, 62 S.Ct. 552)

In Southern Pacific Co. v. Interstate Commerce Comm., 219 U.S. 433, 31 S.Ct. 288, 290-291, this Court quickly disposed of the fiction that by labelling the act of regulation as something else and less, it ceased to be regulation. Chief Justice White, speaking for the entire Court, brushed aside the contention that the Commission had "simply taken into consideration," as claimed, "some of the elements proper to be considered in the ultimate exertion of the lawful power to forbid an unjust and unreasonable rate and fix a reasonable one." Thereupon this Court applied the true test, that the nature and character of its order determined the substance of the power which the Commission undertook to exert in making such order.

Here, precisely the same regulatory control, procedure and order were applied to the production and gathering properties and to the local business of Interstate Company as to the admittedly regulable properties and business (R. V. 1, pp. 81-86). Regulation is regulation by whatever name it may be designated.

V. 2, pp. 914, 915, 917, 918), in order to bring the purely "local" field sales of petitioner within the term "in interstate commerce," as that Court construed the language of *Section 1(b)* of the Act.

The two concepts—that is, of the Commission and of the Court of Appeals—are different and divergent both in theory and in application.

This brings us to an examination of the authority granted to and withheld from the Commission by Congress in the Natural Gas Act.

THE PERTINENT PROVISIONS OF THE NATURAL GAS ACT.

The Gas Act,[3] so far as here material, provides:

Section 1(a). "* * * Federal regulation in matters relating to the transportation of natural gas and the sale thereof *in interstate* * * * *commerce* is necessary in the public interest."

Section 1(b). "The provisions of this Act shall apply to the *transportation* of natural gas *in interstate commerce"* and "to the *sale in interstate commerce* of natural gas for resale * * *."

"The provisions of this Act * * * *shall not apply to any other* transportation or sale of natural gas" or "to the production or gathering of natural gas."

Section 2(6). "'Natural gas company' means a person *engaged in* the *transportation* of natural gas *in interstate commerce*, or the *sale in interstate commerce* of such gas for resale."

Section 2(7). "'Interstate commerce' means commerce between *any point in a State and any point outside thereof* * * *."

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3. 52 Stat. 821; 15 U.S.C.A. 717, et seq.

Section 19(b) of the Act provides in part:

"* * * The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347)."

The inquiries here are:

What activities did Congress, by the language "*in* interstate commerce," intend to and actually regulate by the Act?

What persons did Congress, by that phrase, intend to and actually subject to Commission regulatory authority under the Act?

At the outset, it is to be observed that: The Act which is regulatory, not prohibitory, does not purport to embrace the whole of the very wide area of federal constitutional authority over "interstate commerce" and all the ramifications thereof. "Interstate commerce," which is not measured by or confined to "interstate transportation" or "interstate sale," is a concept and term of far-reaching and large significance. The exceedingly broad jurisdiction of the Congress over that subject matter is not here in issue. The sole question here is, what is the ambit of the admittedly limited and restricted authority which Congress, by the Gas Act, delegated to the Commission?

The total coverage of the Act, that is, all "the provisions of this Act," specifically is restricted to the activities of "transportation" and "sale" and definitely confined, as to such activities and the persons engaged therein, to those which are "*in interstate commerce.*" Congress expressly so limited the federal regulation authorized.

The Act expressly excludes "*any other transportation or sale*" as well as "*production or gathering*" from the purview of its provisions.

The Act contains no grant of authority over "production or gathering" or any other activities except transportation and sale "*in interstate commerce.*"

The Act is silent as to activities "affecting" or "obstructing" interstate commerce or persons engaged in such activities.

The Act is silent with respect to "the production of goods for commerce."

The Act is silent as to the "flow of commerce" or the

"current of commerce" as a foundation of Commission jurisdiction.

The Act affirmatively defines a "natural gas company" as a person engaged in the transportation or sale of natural gas *"in interstate commerce."*

The Act identifies the activities constituting, and the persons engaged in, "commerce between any point in a state and any point outside thereof," by the limiter *"in interstate commerce."*

The jurisdiction of the Commission, whatever its reach, is conferred and limited by the Congressional grant of authority in the controlling Gas Act. It is elementary that jurisdiction of a statutory agency over a subject matter cannot be created otherwise. There is no presumption at any time or in any court which can support or validate the exercise of a non-existent jurisdiction *(Panhandle Eastern Pipe Line Co. v. Federal Power Comm.,* 324 U.S. 635, 65 S.Ct. 821, 823). Moreover, the jurisdiction of a statutory agency such as the Federal Power Commission must appear affirmatively. Its order is void unless supported by findings of the basic facts conditioning its power *(United States v. Chicago, M. St. P. & P. R. Co.,* 294 U.S. 499, 504-505, 55 S.Ct. 462, 465).

The "shall not" provisions of the Act mean "shall not." They constitute commands which forbid and are "a limitation on jurisdiction and a legal standard that must be given effect." Moreover, "The Commission must observe and the courts must enforce" them *(Connecticut L. & P. Co. v. Federal Power Comm.,* 324 U.S. 515, 65 S.Ct. 749).

It is important to bear in mind that the "shall not apply" commands of the Act exclude from the regulatory jurisdiction of the Commission certain operations and facilities of a "natural gas company," which otherwise might be subject to the regulatory jurisdiction of that body. Stated otherwise, if a company be not engaged either in the transportation of natural gas *in* interstate commerce or in the sale *in* interstate commerce of natural gas for resale, that company in no event would be liable in any degree, or at all, to the regulatory authority of the Commission. Accordingly, the "shall not apply" provisions of *Section 1(b)* of the Act

serve no purpose with respect to such a company. Such provisions can serve only to limit the regulatory authority of the Commission over the excluded facilities and operations of a "natural gas company," which otherwise might be subject, as to such facilities and operations, to Commission regulation.

DEVELOPMENT OF STATUTORY STRUCTURE OF GAS ACT (1935-1938).

Throughout the years, and in literally hundreds of statutes, whenever Congress has desired to subject to federal regulation, control or prohibition, certain activities and operations *which are not actually in* "interstate commerce" but in some manner affect, burden or obstruct it, or are related thereto, that body, by apt language in enlargement of the restricted term "in interstate commerce," has included such activities and operations within the coverage of the legislation, in the exercise of its sweeping constitutional power to regulate commerce "among the several states."

The attention of the Court is directed to two recent examples of such statutory enactment. The provisions of the National Labor Relations Act, 49 Stat. 449, 29 U.S.C.A., Sec. 151, *et seq.*, clearly illustrate the standard Congressional differentiation between those activities which are "*in* interstate commerce" and those "affecting commerce" in some manner. In that Act *(Section 2(6), (7))*, the term "commerce" is defined as meaning "trade, traffic, commerce, transportation or communication among the several states * * *"; and the term "affecting commerce," to which the coverage of the Act is extended, is then defined as meaning "in commerce, or burdening or obstructing commerce or the free flow of commerce * * *."

Similarly, this Court has recognized that the coverage of the Fair Labor Standards Act of 1938, 52 Stat. 1060, 29 U.S.C.A., Sec. 201, *et seq.*, which is "the exercise by Congress of its power to regulate commerce among the several states," goes far beyond activities which are *actually* "*in* interstate commerce" *(Roland Electrical Co. v. Walling*, ——U.S.——, 66 S.Ct. 413). That Act embraces the operations of "industries engaged in commerce or in the produc-

tion of goods for commerce," on the concept that the existence of sub-standard labor conditions "burdens commerce and the free flow of goods in commerce," "constitutes an unfair method of competition in commerce," and "leads to labor disputes burdening and obstructing commerce * * *." (Section 2).[4]

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4. Such Congressional technique of statutory draftsmanship, extending the exercise of Federal authority over "interstate commerce" beyond that which actually is "in interstate commerce," also is disclosed by the following.

The Congressional declaration that an activity or article of commerce "shall be considered to be in interstate commerce if such commodity is part of that current of commerce usual in the trade," or similar phraseology such as "free flow of goods in commerce," is found among others in the Packers and Stockyards Act of 1921, 42 Stat. 160; the Commodity Exchange Act, 49 Stat. 1491; the Grain Futures Act, 42 Stat. 998; the Perishable Agricultural Commodities Act, 48 Stat. 584; the Tobacco Inspection Act, 49 Stat. 73; the Fair Labor Standards Act of 1938, 52 Stat. 1060; the National Labor Relations Act, 49 Stat. 449; and the Securities and Exchange Act of 1934, 48 Stat. 881.

Among the many other statutory terms of enlargement commonly used are: "burden and obstruct the normal channels of commerce." "affect interstate commerce," "ship or deliver for shipment in interstate commerce," "transported or intended to be transported in interstate commerce," "engaged in commerce or in the production of goods for commerce," "stored for interstate commerce," "when offered for interstate shipment," "for the purpose of or in connection with a transaction or shipment in commerce," "transport, ship or receive in interstate commerce," "in restraint of trade or commerce among the several States," "to monopolize any part of the trade or commerce among the several States", "the use of the mails and instrumentalities of interstate commerce," "affect the interstate commerce in which those companies engage," "affect trade, commerce, transporation or communication among the several States," "affect interstate commerce in coal," "burdens and affects the flow of commerce." See: Agricultural Adjustment Act, 50 Stat. 246; Grain Standards Act, 39 Stat. 483; Investment Advisers Act, 1940, 54 Stat. 857; National Labor Relations Act, 49 Stat. 449; Public Utility Holding Company Act of 1935, 49 Stat. 803; Federal Caustic Poison Act. 44 Stat. 1407; Cooperative Marketing Act, 44 Stat. 802; Fair Labor Standards Act of 1938, 52 Stat. 1060; United States Warehouse Act, 42 Stat. 1282; Bureau of Agricultural Economics Act, 42 Stat. 532; Cotton Standards Act, 42 Stat. 1517; Federal Fire Arms Act, 52 Stat. 1250; Sherman Anti-Trust Act, 50 Stat. 693; Associations of Producers of Agricultural Products Act, 42 Stat. 388; Securities Act of 1933, 48 Stat. 74; Securities and Exchange Act of 1934, 48 Stat. 881; Investment company Act of 1940, 54 Stat. 847; Discrimination against Farmers Cooperative Associations Act, 44 Stat. 1423; Interstate Transportation of Petroleum Products Act, 49 Stat. 30, 31; Bituminous Coal Act of 1937, 50 Stat. 72, 83.

Such Congressional differentiation and technique of statutory draftsmanship is strikingly illustrated in the "Public Utility Act of 1935," 49 Stat. 803, 838, in which Act are incorporated as separate integrated enactments, the "Public Utility Holding Company Act of 1935" (Title I), 15 U.S.C.A. 79a, and the "Federal Power Act" (Title II), 16 U.S.C.A. 796. In the

In the establishment of federal regulation over interstate electric and natural gas utilities, the Congress followed its own long established and standard procedures and statutory provisions, in the parallel and virtually identical delegations of jurisdiction to the Commission in the Federal Power Act and in the Natural Gas Act, respectively. The direct legislative development of these laws from the original drafts thereof proposed by the Commission to the statutory structure finally adopted in the enacted statutes, reflects unmistakably and conclusively the Congressional purpose and intent and the meaning, force and effect of *Section 1(b)* of the Gas Act and *Section 201(b)* of the Power Act. Such legislative matters and facts are relevant and material to, and of great weight in, the determination of the propriety and legality of the Commission exercise of asserted authority herein (*United States v. Dickerson*, 310 U.S. 554, 561, 60 S.Ct. 1034, 1038; *United States v. American Trucking Associations*, 310 U.S. 534, 543, 60 S.Ct. 1059, 1063; *Connecticut L. & P. Co. v. Federal Power Commission*, 324 U.S. 515, 65 S.Ct. 749, 754).

Both the Gas Act and the Power Act, including the jurisdictional sections of each, were drafted by the Federal Power Commission, and as so drafted were introduced and the enactment thereof actively sought by the Commisssion before the Congress.[5] Title II of each bill was the Commission-drafted Federal Power Act, while Title III of each bill was the Commission-drafted Natural Gas Act.

Holding Company Act, Congress desiring to enlarge the jurisdiction of the Securities and Exchange Commission to embrace "activities which directly affect or burden interstate commerce" in addition to "interstate commerce" itself, did so, expressly and specifically (Section 1(c), 49 Stat. 803, 804, 15 U.S.C.A., §79a(c)). This is in direct contrast with the restricted jurisdictional provisions of the Power Act.

5. Hearings, House Committee on Interstate and Foreign Commerce, H.R. 5423, 74th Cong., 1st Sess., Test. Comm'r. Seavey, Fed. Power Comm. pp. 400-401, March 7, 1935. Connecticut L. & P. Co. v. Federal Power Comm., 324 U.S. 515, 65 S.Ct. 749, 755-756.

H.R. 5423, 74th Cong., 1st Sess., February 6, 1935; S. 1725, 74th Cong., 1st Sess., February 6, 1935.

Hearings, Subcommittee House Committee on Interstate and Foreign Commerce, H.R. 11662, 74th Cong., 2nd Sess., Test. Solicitor DeVane, Federal Power Comm., p. 10, April 2, 1936.

In the jurisdictional sections of the Commission-drafted legislative bills, entitled "Application of Title,"[6] in addition to the regulation of "the transmission and sale" of natural gas *in* interstate commerce," federal jurisdiction *also* was to follow the "flow" of electric energy and natural gas through "all facilities connected" with any system or facilities *actually* devoted to the transmission and sale of natural gas "in interstate commerce." The Commission draft of the Gas Act is silent as to "production or gathering."

Naturally, under the Commission "flow" concept, there was no exclusion of "production or gathering." Such an exclusion obviously would have been inconsistent with the Commission reach for jurisdiction.

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6. NATURAL GAS ACT AS DRAFTED BY COMMISSION (1935).

"Section 301(b). The provisions of this title shall apply to the transmission and sale of natural gas in interstate commerce, but shall not apply to the retail sale of natural gas in local distribution. **The Commission shall have jurisdiction** over all facilities for such transmission or sale and **over all facilities connected therewith as parts of a system of natural gas transmission situated in more than one State,** except facilities for the retail distribution of natural gas, or for the transmission of natural gas solely for the use of the producer or transmitter or the use of his tenants on property owned or controlled by him and not for resale. Every person who owns or operates facilities subject to the jurisdiction of the Commission under this title shall be subject to the provisions of this title. The term 'distributor' when used in this title means any person who owns or operates such facilities." (Emphasis added.)

FEDERAL POWER ACT AS DRAFTED BY COMMISSION (1935).

"Section 201(a). The provisions of this title shall apply to the transmission and sale of electric energy in interstate commerce and **to the production of energy for such transmission and sale,** except where such electric energy is sold for use within the State in which it is generated. **The Commission shall have jurisdiction over all facilities for such transmission, sale, and/or production of energy** by any means and **over all facilities connected therewith as parts of a system of power transmission situated in more than one State,** except facilities for the retail distribution of electric energy, or for the production or transmission of energy solely for the use of the producer or transmitter or the use of his tenants on property owned or controlled by him and not for resale. Every person who owns or operates facilities subject to the jurisdiction of the Commission under this title and every person who controls, directly or indirectly, any such person, shall be subject to the provisions of this Act. The term 'public utility' when used in this Act means any person who owns or operates such facilities." (Emphasis added.)

H.R. 5423, 74th Cong., 1st Sess., February 6, 1935; S. 1725, 74th Cong., 1st Sess., February 6, 1935. Hearings, House Committee Interstate Commerce, February 19, 1935, pp. 43, 31.

Moreover, *Section 301(a)*, entitled "Necessity for Regulation," of the then Commission-proposed Natural Gas Act, declared:

> "Section 301:(a) It is hereby declared that the *business of selling, transmitting, and distributing as a part of interstate commerce*, natural gas for ultimate public consumption is affected with a public interest and that the regulation, in accordance with the provisions of this title, of *that part of such business which is not subject to regulation by the States*, is necessary in the public interest."[7]

In the Commission drafts of the Gas Act and the Power Act, *all* possible jurisdiction of the Federal Government over "interstate commerce" was to be delegated to the Commission.

However, *all* the various Commission proposals thus to extend federal regulation beyond transportation and sale "in interstate commerce" were discarded and rejected by Congress in the Power Act, as enacted in 1935, and in the Gas Act, as enacted in 1938.[8]

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7. H.R. 5423, 74th Cong., 1st Sess., February 6, 1935, Sec. 301(b); S. 1725, 74th Cong., 1st Sess., February 6, 1935, Sec. 301(b).

8. NATURAL GAS ACT, AS ENACTED:

"Section 1(b). **The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.**" (Emphasis added.) 15 U.S.C.A. 717(b) (H.R. 6586, 75th Cong., 3rd Sess., June 21, 1938)..

FEDERAL POWER ACT, AS ENACTED:

"Section 201(b). The provisions of this Part shall apply to the transmission of electric energy **in interstate commerce** and to the sale of electric energy at wholesale **in interstate commerce, but shall not apply to any other sale of electric energy** or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. **The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this Part and the Part next**

Not only was the "flow" theory, through interconnected facilities, stricken from the enacted statutes, but the catch-all phrases "as a part of interstate commerce" and "that part of such business which is not subject to regulation by the States" also were eliminated by Congress. Additionally, to define and to confine federal regulation to transportation and sale "*in* interstate commerce," the Congress elected to specify that "*The provisions of this Act* * * * shall not apply to "*any other* transportation or sale * * * or to the production or gathering of natural gas." The term "any other transportation or sale" is in apposition to transportation or sale "*in* interstate commerce," both in concept and in sentence structure. That phrase, in the light of the foregoing historical recital, clearly refers only to "other transportation or sale," which although not *in* interstate commerce, in fact, nevertheless may *affect or relate* to interstate commerce. For example, it is that transportation or sale which is in the "current of commerce" or in the "flow of goods in commerce," and so, "a part of interstate commerce" in its broader and more comprehensive aspect, which is excluded from the coverage of the Act. The language in question certainly does not relate to that transportation or sale which is purely local and not actually "*in* interstate commerce." Such transportation or sale is *intrastate* by every legal standard and admittedly beyond the constitutional authority of the Federal Government. Congress certainly would not be expected to indulge the idle gesture of declaring that it did not intend to exceed its constitutional powers.

"The express statutory limitation upon and exclusion from Commission jurisdiction of "the production or gathering of natural gas" (even if, as insisted by Mr. Justice Douglas in the *Canadian* case, *supra*, that jurisdictional barrier relates only to certain of the activities of production or gathering and does not embrace any part of the essential property or facilities by which alone such activities can be

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following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter." (Emphasis added.) 16 U.S.C.A. 824(b) (H.R. 5423, 74th Cong., 1st Sess., as amended, August 26, 1935).

carried on and conducted)" is directly contrary to and inconsistent with the Commission assertion of regulatory authority herein, which under its legal theory of jurisdiction is said to attach at and "from the mouths of the wells where produced" *(R. V. 1, pp. 82-83)*.

Herein are disclosed actual and direct Commission controls: over the purely local business and operations, over the production properties devoted to such local business operations, over the activities of production therefor, and over the "rates and charges" for natural gas used in connection therewith. All of such controls avowedly and actually were exercised "from the mouths of the wells." Moreover, all of such business, operations, properties, activities and "rates and charges," without distinction or differentiation of any kind, *are incorporated into and made a part of* the implements, devices, procedures and orders of the Commission applicable to the regulable properties, operations and business of Interstate Company *(R. V. 1, pp. 81-86)*. This Commission action is regulation of that which is *not* "transportation and sale *in* interstate commerce of natural gas for resale"; and it is regulation of "the production or gathering

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9. On the same level of logic, Mr. Justice Douglas, if consistent, naturally would have insisted also that, since the word "activity" as well as the word "property" was not used in the statutory language of exclusion of "the production or gathering of natural gas" from "the provisions of this Act," the declared exclusion of "production or gathering" did not cover either the "property" or the "activity" of production or of gathering. As a matter of fact, such is the practical effect of the statutory construction indulged by the learned Justice. Under his opinion, all that is left of the statutory exclusion in question, after his declaration "Certainly that provision precludes the Commission from any control over the activity of producing or gathering of natural gas," is the limited application thereof stated by him, as follows: "That the Commission has no control over the drilling and spacing of wells and the like." This, of course, means that the Commission has complete regulatory-control over all property and activity of "gathering," and over all property and activity of "production" as well, except the mere physical process of well drilling, the incidental determination of well spacing and perhaps some other collateral matters of operation. In this manner, the business of "production" and of "gathering" is delegated to Commission regulatory-control, by four members of this Court.

Under the reasoning of Mr. Justice Douglas, the statutory language of exclusion actually becomes language of inclusion. The broad meaning and sweep of the term "production * * * of natural gas" thus is construed into virtual nothingness. The Connecticut case, supra, is directly to the contrary.

of natural gas." Neither the clever misuse or disregard of the statutory language nor the resort to devious processes of logic can erase or by-pass these patent facts.

During the interval from 1935 to 1938, additional drafts of legislative bills "to regulate the transportation and sale of natural gas in interstate commerce" were introduced in Congress (H.R. 11662, 74th Cong. 2d Sess., 1936; H.R. 4008, 75th Cong. 1st Sess., 1937). In each of such subsequent legislative bills the regulatory authority proposed to be lodged in the Federal Power Commission was further limited and restricted. It is significant, however, that in 1937, as a companion measure to and considered at the same time as H.R. 4008 (Hearing, House Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess., March 24, 1937; H. R. 4008, pp. 10-20), there was introduced a bill entitled "A Bill to Aid the Several States in the Proper Conservation, Orderly Production and Procurement of Natural Gas for Interstate Commerce * * *."[10]

In the foregoing legislative proposal, *which thereafter died in Committee,* the broad sweep of federal authority over

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10. Therein (H.R. 5711, 75th Cong., 1st Sess.) among other things, it was declared:

"The provisions of this Act shall apply to the procurement of natural gas for the purpose of its transmission through pipe lines and its sale, exchange, transmission, or distribution in interstate commerce; also to all instrumentalities, including contracts and agreements which substantially affect such interstate transportation and sale or exchange of natural gas."

"The Commission (Federal Power) shall have jurisdiction over all facilities for the procurement of natural gas for its transmission through pipe lines and its sale, or for exchange, or distribution in interstate commerce, and over the transmission of natural gas in pipe lines in interstate commerce and over the sale, or exchange, of natural gas in interstate commerce and over all facilities connected therewith as parts of a system of natural-gas transmission operated in more than one State."

"'Natural gas-pipe line' means a main, including its branches, by means of which natural gas is transmitted in whole or in part in interstate commerce, destined in whole or in part for ultimate distribution to industries, the general public, or other consumers, whether or not such line or lines, or portions thereof, are owned or controlled by a single or by several interests."

(Hearing, House Committee, Interstate and Foreign Commerce, H.R. 4008, 75th Cong., 1st Sess., p. 11.)

commerce in natural gas "among the several States" again was sought to be delegated in full measure to the Federal Power Commission, just as in the Commission-drafted proposal of 1935. There was this difference, however, that in the 1937 proposal, by express declaration, production and gathering were to be within the coverage of the proposed Commission authority, as well as all facilities and activities "which substantially affect such *interstate* transportation and sale or exchange of natural gas."

Thus, in the 1935 and 1937 proposals, *both rejected by Congress,* is found the precise pattern of the asserted jurisdiction exercised by the Commission in this case. No such jurisdictional foundation is laid in the Gas Act, *as enacted.*

Neither the Commission nor the courts have any authority whatever to create or bestow jurisdiction. The determination of the area in which federal regulation is to be exercised is a function belonging exclusively to the Congress, as this Court on numerous occasions has declared. Nevertheless, the express and mandatory jurisdictional controls and limitations of the Gas Act are overlooked, forgotten or explained out of existence, by Commission and Court alike, in the continuing non-statutory program of ever expending federal regulation over all branches of the natural gas industry.

In the light of the background out of which the actual structure of the enacted statutes developed, it is evident that Congress adopted the phraseology of *Section 1(b)* of the Gas Act and also *Section 201(b)* of the Power Act, advisedly. The phraseology of the Commission-prepared and sponsored drafts of both Acts is in direct contrast with the limited area of regulatory control which Congress intended to lodge, and by appropriate language both of inclusion and exclusion did lodge, in the Federal Power Commission in both Acts, *as enacted.* It must be conceded that Congress knew its own purposes and was qualified to draft legislation to reflect those purposes. Had Congress desired to embrace in the coverage of the Natural Gas Act the "flow" theory, or activities "burdening" and "affecting," but not in fact *in* "interstate commerce," or "the production or gathering of natural gas," there is not the slightest doubt but that it

would have so declared directly and unequivocally, in accordance with its established procedure in that behalf.

Congress in each Act said precisely what it meant and meant precisely what it said. It is now evident, particularly from the *Connecticut* case, *supra*, that the free and easy administrative construction of legislative enactments to facilitate the evasion of statutory restraints and the enlargement of statutory authority, no longer is to continue unchallenged by this Court.

ARGUMENT.

The position of *Amici Curiae*, as hereinabove stated, is: *Within the terms and meaning of the Natural Gas Act*, the sales of natural gas by petitioner, Interstate Natural Gas Company, locally in the Monroe Field, Louisiana, to the three interstate pipeline companies, all in form, manner and substance as disclosed without contradiction in the record herein, are not within the scope of the rate-regulatory authority delegated by the Congress to the Federal Power Commission.

On the record, it cannot be maintained, and neither the Commission nor the Court of Appeals has undertaken to maintain, that Interstate Company *in fact* has any part in or responsibility for the movement or transportation of the natural gas so sold by it locally "in the Monroe Gas Field to certain pipe line companies" *after* the absolute and complete sales and deliveries thereof by it to such "pipeline companies" locally "in the Monroe Gas Field" *(R. V. 1, pp. 82-83)*.

On the record, it cannot be maintained and neither the Commission nor the Court of Appeals has undertaken to maintain that *after* such local and absolute field sales and deliveries by Interstate Company, it *in fact or in law*, has any right or interest in such gas, has any liability of any kind with respect thereto, has any control or right of control whatever over such gas, its transportation, its destination, its disposition or its ultimate use, or has any interest or concern whatever in the subsequent sales thereof or the

proceeds of such sales by the "certain pipeline companies" named.

On the record, it cannot be maintained and neither the Commission nor the Court of Appeals has undertaken to maintain, that Interstate Company has any relationship whatever, in fact or in law, to or with any of the "certain pipe line companies" other than that of vendor of natural gas sold locally by it in the Monroe Field, Louisiana, to each of the three interstate pipeline companies in question.

Interstate Company, "as to sales of natural gas made by it in the Monroe Gas Field to certain pipe line companies" *(R. V. 2, p. 911),* is not engaged *actually* in "the transportation of natural gas in interstate commerce" nor is it engaged *actually* in "the sale in interstate commerce of natural gas for resale," nor is it engaged *actually* in "commerce between any point in a State and any point outside thereof." It *sells and delivers* the natural gas here in question "at a point near Perryville in the State of Louisiana," and "at a point near Guthrie in the State of Louisiana." *The Commission so found (R. V. 1, pp. 82-83).* Such then are the facts.

There is no finding or conclusion by the Commission or the Court of Appeals, nor would the record support such a finding or conclusion, that Interstate Company and the three pipeline companies constitute "a single enterprise," or "a joint operation," as was found to be the fact in the *Matter of Natural Gas Pipeline Company of America and Texoma Natural Gas Company,* 2 F.P.C. Rep. 218, 219, 233-234; 35 P.U.R. (n.s.) 41, 43, 55-56; in *City of Detroit v. Panhandle Eastern Pipe Line Company,* 3 F.P.C. Rep. 273, 277; 45 P.U.R. (n.s.) 203, 207-208, and in *The Matter of Canadian River Gas Company, et al.,* 3 F.P.C. Rep. 32, 40, 61-62; 43 P.U.R. (n.s.) 205, 213, 231-232. On the contrary, and directly applicable to this case, the Commission twice has held that Mississippi River Fuel Corporation, one of the three pipeline purchasers from Interstate Company in Monroe Field, "produces no natural gas, but purchases its requirements in the State of Louisiana and transports that natural gas through its pipeline out of the State of Louisiana, into and through" other states where it is sold by direct sales

and sales for resale "for general public consumption." *(In the Matter of Mississippi River Fuel Corporation,* 2 F.P.C. Rep. 170, 171, 121 F. (2d) 159.) See also to the same effect, *In the Matter of Mississippi River Fuel Corporation,* F.P.C. (1945) Docket No. G. 462, opinion and order November 9, 1945. Such findings and conclusions are not consonant with the "single enterprise" concept, as between Mississippi River Fuel Corporation and Interstate Company, or Southern Carbon Company or United Carbon Company, from which companies it also purchases gas locally in the Monroe Field. In fact, they are in conflict with any such factual situation.

The nature of the local dealings in the Monroe Field between Interstate Company and each of the three pipeline companies does not lend itself to the "single enterprise" concept.

The operations and business of Interstate Company do not extend beyond the several points of local field delivery and sale to the three pipeline companies. The natural gas there so sold and delivered to the three pipeline companies thereafter is packaged, transmitted and sold beyond the boundaries of the State of Louisiana only because the three pipeline companies maintain interstate pipeline systems and indulge interstate sales activities for that purpose. Interstate Company has no part in such operations and activities.

There is no evidence, no finding and no contention by Commission or Court of Appeals, that there is an affiliate relation between Interstate Company and the three purchaser pipeline companies, as was the fact in *Public Utilities Comm. v. Attleboro Steam and Electric Co.,* 273 U.S. 83, 47 S.Ct. 294 and *Peoples Natural Gas Co. v. Federal Power Comm.,* 127 F. (2d) 153, later herein discussed.

Nor is there any finding and conclusion of law by the Court of Appeals or Commission that, because of the ownership and operation by Interstate Company of the interstate pipeline system (separate from, independent of and disassociated from the sales herein under consideration) from De Siard Compressor Station in the Monroe Field, Louisiana, to Baton Rouge, through portions of the State of Mississippi, and the sales of natural gas in interstate commerce

effected thereby, the Interstate Company is subject to the jurisdiction of the Commission in connection with the "field sales" to the three pipeline companies. Such finding and conclusion of law would be contrary to law. Jurisdiction over non-jurisdictional activities and facilities cannot be created by mirrored reflection from activities and facilities which are subject to Commission regulation. A company which engages in operations and activities which subject it to Commission regulation and make it a "natural gas company," as defined in the Act, may also engage in other activities and operations which are not subject to Commission regulation. Such other non-jurisdictional activities and operations do not become subject to Commission regulation because the Company is a "natural gas company." They continue exempt from Commission control and regulation, and the Commission is not permitted to exercise any control whatever over them.

Panhandle Eastern Pipe Line Co. v. Federal Power Comm., 324 U.S. 635, 641-642, 65 Sup. Ct. 821, 825.

The test of the validity of Commission regulation is not the character of the general business of the Company, but whether the particular business which is sought to be regulated is within the lawful limits of the Commission's statutory warrant of authority. It is, of course, elementary that the Commission, a creature of statute, possesses only those specific powers and duties delegated to or imposed upon it by the Congress. It may not at will assume or reject jurisdiction. The application of the foregoing principles to particular facts and situations is common practice.

This leaves the physical phenomenon of "constant flow" from the well-head as the only test, as to whether Interstate Company in connection with the "field sales" under consideration, is engaged as a participant, *as a matter of law even though not in fact*, in "the interstate transportation and sale of natural gas for resale."

The meaning and effect attributed herein to the Gas Act, by Commission and Court of Appeals, makes the authority of the Commission to regulate the local facilities, operations and sales activities of Interstate Company here

under review, depend, not on the nature of such facilities, operations and sales activities, as required by *Sections 1(b)* and *2(6)* of the Act, but solely al... upon the subsequent and separate and independent interstate facilities, operations and sales activities of the three purchaser pipeline companies.

Under the Commission legal theory, jurisdiction *relates back* from the subsequent interstate operations and activities of the three purchaser pipeline companies to Interstate Company and its local properties, operations and activities, and *attaches* at and from the wells where the gas involved herein is produced.

Such, however, is not the structure or content of the Gas Act as has been shown in earlier subdivisions of this brief.

The respective legal conclusions of the Commission and the Court of Appeals that Interstate Company, as such local field vendor of natural gas, *is itself*, in law, engaged in "the transportation of natural gas *in* interstate commerce" and in "the sale *in* interstate commerce of natural gas for resale," therefore rest solely on the fact that the several purchasers of such gas *locally* in the Monroe Field *thereafter*, in and by their own pipeline systems and through their own sales activities, engage in the business of "transporting and selling * * * in interstate commerce," the natural gas so locally purchased by them. Such conclusions involve assumptions of fact and conclusions of law, which we next consider.

I.

The Commission Theory of Its Jurisdiction Herein is Without Support in the Natural Gas Act.

It is obvious from the text of the two Acts and it is conceded by the Commission *(Solicitor De Vane, F.P.C., Hearing, Subcommittee, Committee Interstate and Foreign Commerce, H.R. 11,662, 74th Cong., 2nd Sess., p. 10; Comm. Br. Ct. of Appeals, pp. 16-17)* that the Gas Act "follows closely" and actually parallels the Federal Power Act in the jurisdictional provisions thereof.

This Court, in the case of *Connecticut L. & P. Co. v. Federal Power Commission, supra*, examined with considerable particularity the legislative history and the basis, structure, meaning and scope of the Commission authority under *Section 201(b)* of the Power Act (footnote 8, *supra*). Mr. Justice Jackson, speaking for the majority of this Court, pointed out (324 U.S. at pages 529-530, 65 S.Ct. at pages 756-757) that:

> "This bill came before Congress as prepared by the staff of the Commission couched largely in the technical language of the electric art. Federal jurisdiction *was* to follow the flow of electric energy, an engineering and scientific, rather than a legalistic or governmental test. Technology of the business is such that if any part of a supply of electric energy comes from outside of a state it is, or may be, present in every connected distribution facility. Every facility from generator to the appliance for consumption may thus be called on for transmitting such interstate power. * * * It has never been questioned that technologically generation, transmission, distribution and consumption are so fused and interdependent that the whole enterprise is within the reach of the commerce powers of Congress, either on the basis that it is, *or that it affects*, interstate commerce. Such a broad and undivided base for jurisdiction of the Power Commission *would be* quite unobjectionable and *perhaps* highly salutary *if* the United States were a unitary government and the only conflicting interests to be considered were those of the regulated company." (Emphasis added.)

After suggesting various reasons which might have influenced the Congress, the opinion recognized the fact that "whatever reason or combination of reasons" motivated the Congress, that body deliberately and specifically rejected the "flow" theory of sweeping jurisdiction predicated upon the interconnection of facilities "from generator to the appliance for consumption." The Commission jurisdictional contention, *thus rejected by Congress*, that "such (interstate) transmission, in our opinion, extends from the gene-

rator, where generation is complete, to the point where the function of conveyance in bulk over a distance, which is the essential characteristic of 'transmission' is completed * * *" *(Re, Connecticut L. & P. Co.*, 3 F.P.C. 132, 142; 143; 44 P.U.R. (n.s.) 170), is identical with its contention of jurisdiction in this case that the fact of "constant flow from the mouths of the wells," where produced through connected facilities of others and ultimately into the facilities and channels of interstate commerce, means, *as a matter of law*, that transportation and sale *in* interstate commerce "extends from" the well head, thus including the local facilities and activities of the field vendor.

Such was the Commission's reach for power: in its proposed drafts of the Power Act and of the Gas Act in 1935, in its order in the *Connecticut* case, *supra*, in 1942, in its order in this case in 1943, and in other of its decisions. Then came the contrary decision of this Court in the *Connecticut* case in 1945, which makes discussion of all other Commission and judicial decisions unnecessary.

The inescapable fact is that Congress rejected the "flow" theory of the Commission in both Acts, and yet this case is here now on review because, and only because, the Commission asserted rate-regulatory control over the field sales here in question, *expressly and specifically under the "flow" theory and not otherwise.*

By what manner of reasoning then can it now be urged that despite the Congressional rejection of the "flow" theory of jurisdiction in both the Power Act and the Gas Act, nevertheless the jurisdictional answer is precisely the same in this case as though the Commission "flow" concept had been adopted by Congress, although this Court, after careful consideration, found otherwise in the *Connecticut* case? In that case this Court found a vast and basic actual and legal difference in coverage between the Commission theory and the Congressional grant of jurisdiction.

As indicated forcefully in the *Connecticut* case and as is disclosed both in the legislative record and in the enacted statutes, Congress, in building the structure of Federal regulatory control in 1935 and 1938, was "acutely aware" of

the basic and somewhat divergent differences between the state or local and the national or centralized theory and concept of government, both of which, with consummate skill, were moulded into the framework of our Constitution. The issue presented to and considered by Congress was not principally or merely the technical placement of particular regulatory controls under State or Federal authority, as the case might be. Much more was involved. Congress, "in the light of our history and the structure of our government," intended that Federal regulatory authority should be eliminated and should not cover anything like the entire area of the constitutional jurisdiction of the Federal government under "the interstate commerce clause." That Congressional policy and intention was crystallized into the unambiguous language of the two Acts. The present issue is whether these limited and restricted yardsticks or charters of statutory authority, as is their purpose and function, do control and do confine the Federal Power Commission within the delegated and lawful ambit of its activities. In the face of the statute, it would seem that the theories of the Commission and the Court of Appeals and all other concepts of jurisdiction must be discarded as immaterial.

The consideration of the Court also is directed: to the confusion resulting from, to the contradiction inherent in, and to the impossible application of the Commission *flow* theory of jurisdiction to the facilities and activities of the producer or gatherer of natural gas which disposes of it *locally*, in the state and field of origin, to an interstate pipeline, prior to the transportation and sale thereof for resale "*in* interstate commerce" by such interstate pipeline. It is perfectly clear from the history and terms of the Act that Congress did not intend any such consequence, but did intend that such consequence should not result under the federal regulation authorized by it.

For the purposes of this discussion, the production or gathering, and local field sale or disposition of gas, *prior* to the transportation and sale thereof in interstate commerce for resale, fall within three categories. They are:

One. Production or gathering and sale by an enterprise which does not own or operate an interstate pipeline

system, by and from which transportation and sales for resale *in* interstate commerce are made. The gas is sold and delivered *locally* in the field of origin. To consummate such sale and delivery, the *local* facilities of the vendor are connected with the interstate facilities of the purchaser thereof. Thereafter the gas is transported and sold "*in* interstate commerce" for resale *by such purchaser.*

Two. Production or gathering and sale by an enterprise which is "a natural gas company" under the Act, because of the ownership and operation by it, of an interstate pipeline system, through which gas is transported and sold in states other than in the state of origin for resale. *All* natural gas so produced or gathered is delivered into its own pipeline system and thereafter, after interstate transportation, is sold for resale *by the original producer or gatherer thereof.*

Three. Production or gathering and sale by an enterprise which, as in category *Two,* is "a natural gas company" under the Act, because of the ownership and operation by it of an interstate pipeline system:

(a). *A part only* of the natural gas so produced or gathered is delivered into said system and, after interstate transportation, thereafter sold for resale *by the original producer or gatherer thereof;*

(b). *The remainder* of the natural gas so produced does not enter the interstate pipeline system of the producer or gatherer, but, entirely independent of and wholly apart from said interstate pipeline system, is sold and delivered locally in the field and state of origin by the producer or gatherer thereof to a purchaser, which thereupon compresses and transports such purchased gas to another state and thereafter sells it in the state of destination for resale for ultimate public consumption.

In each of the categories the producer, gatherer, it is assumed, knows that the natural gas so sold by it thereafter is to be transported and sold in interstate commerce for resale for ultimate public consumption by the purchaser thereof. (This was also true of the Connecticut company in the *Connecticut* case, *supra.)*

In all of the three categories the physical phenomenon of so-called "constant flow" from the well-head in the state of origin into the channels of interstate commerce for resale in the state of destination is equally present and operative. Such physical fact exists, if at all, irrespective of who produces the gas in the state of origin, of who sells it locally in the field and state of origin, of who transports it across state lines, or of who thereafter sells it for resale in the state or states of destination and consumption. The operation of natural laws is not thus controlled or determined.

With respect to category number "One," although the selling producer knows the gas is "destined" for interstate transportation and sale for resale, and *despite* the actual or assumed fact of "constant flow" from well-head into the channels of interstate commerce, the Commission heretofore and now denies that it possesses jurisdiction over such producer and such sales. The producers in category "One" the Commission describes as "independent producers," as distinguished from producers in category "Two," who utilize their entire gas production in their own interstate pipeline systems.[11]

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11. General Counsel for the Federal Power Commission, speaking for and from the viewpoint of the Commission, before The Interstate Oil Compact Commission, Oklahoma City, Oklahoma, June 15, 1945, under the subject title of "Effect of Recent Supreme Court Decisions on the Production and Conservation of Natural Gas," categorically declared the coverage of the Act and the position of the Commission to be as follows:

"Before undertaking a discussion of this question, it should be emphasized that there was no dispute with respect to the gas which the pipeline company purchases from independent producers. The price paid for such gas, being at arm's length, was allowed as an operating expense of the pipeline company. The Commission, of course, has no jurisdiction over the independent producer and cannot regulate the rates at which he sells gas to the pipeline company. Not only is the Commission's rate-making authority limited to the transportation and sale of natural gas for resale in interstate commerce, but Congress specifically provided in Section 1(b) of the Act that the Commission, as above stated, shall not have jurisdiction over the 'production or gathering of natural gas.' As Mr. DeVane, the Commission's Solicitor, explained in the committee hearings on one of the predecessor bills, the Commission has no authority over the price 'that is paid to the gatherer, the man that produces it; that is binding if the transaction is at arm's length.'" (Hearings on H.R. 11662, 74th Cong., 2d Sess., pp. 42-43.)

"The issue is therefore limited to the gas which the interstate pipeline company itself produces and the question is whether the company should be allowed the actual costs which it incurs in pro-

Nothing in the language of the Act commands or even suggests that the Commission, in the conduct of its regulatory functions, should regulate or is authorized to extend its control into the wide and varied field of production of natural gas. To the contrary, the Act in plain blunt language, withholds from the Commission, under "the provisions of this Act," authority over "the production or gathering of natural gas." The producer of natural gas may be a "natural gas company," under the Act; it may be and often is an oil company; or it may be a company engaged solely in the production and local sale of natural gas. The Commission, in its early decisions[12] and again by its declarations in 1945, sensed the inevitable difficulty and hopeless confusion which would result if it undertook, in connection with regulation of "the transportation of natural gas in interstate commerce" and "the sale in interstate commerce of natural gas for resale for ultimate public consumption," also "to deal with the complicated interrelationship between the natural gas industry and the oil industry."

The Commission also sensed the resulting maze and the administrative impossibility of subjecting the many thou-

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ducing such gas or whether the latter should be 'valued' as a commodity at the point where it enters the company's pipeline."

See also: Re Columbian Fuel Corporation, 2 F.P.C. Rep. 200, 38 P.U.R. (n.s.) 3; Re Sinclair Prairie Oil Company, Docket No. G-197, 2 F.P.C. Rep. 1009; Re Repollo Oil Company, Docket No. G-195, 2 F.P.C. Rep. 1004.

12. In 1940, the Commission in Re Columbian Fuel Corporation, supra, observed: (p. 207)

"The companies to be subjected to regulation were conceived of as 'pipe line' companies, and it was assumed that production and gathering would enter the field of regulation only to the extent that the 'pipe line' companies, either directly or through affiliates, controlled the production or gathering of the gas so transported.

"In making a choice between the broader and the narrower interpretation of its jurisdiction under the Natural Gas Act, insofar as the present respondent is concerned, the Commission is influenced by the above consideration. This consideration is reinforced by the fact that a determination in favor of the broader conception of its jurisdiction would lead the Commission into attempts to deal with the complicated interrelationship between the natural-gas industry and the oil industry. To make regulation of producers and gatherers effective under these circumstances would require statutory authority of much wider scope and machinery exceeding that at the disposal of the Commission with its present limited appropriation."

sands of *local* producers, gatherers and vendors of natural gas, whose product although sold in the field of origin nevertheless under the "flow" theory thereafter enters the channels of interstate commerce for resale, to the rate-regulatory machinery of the Commission. This is true because "the rates and charges" of each such local vendor of necessity would be governed by the individual rate base assigned to it by Commission order after a rate case proceeding.

Situations coming within category "Two" uniformly are held by the Commission to be subject to Commission jurisdiction. This is not done on the theory of "constant flow" from the well-head into the channels of interstate commerce and sale for resale, but on the *premise* that the "production and gathering operations are an integral part of its total operations, including transportation in interstate commerce and the sale of natural gas for resale in interstate commerce. Furthermore, Canadian's operations are an integral part of Colorado's operations and the two comprise a single operating system." *(Re Canadian River Gas Co.*, 3 F.P.C. Rep. 32, 40; 43 P.U.R. (n.s.) 205, 213.) In this type of case there are no field sales or other sales of the natural gas before the actual interstate transportation thereof by the transmitter, which is also the producer of such gas. However, whether or not the hand of Commission regulatory control lawfully may extend to the gas production of those producer-pipeline companies in category "Two" is not as yet finally settled by this Court. See footnote 2, *ante*.

Category "Three" reflects those situations which combine the characteristics of both categories "One" and "Two." Interstate Company is in category "Three." In so far as the gas which it produces is delivered into its own interstate pipeline system to Baton Rouge for interstate transportation and sale for resale (category "Two"), it has submitted to Commission jurisdiction. It is the Monroe Field "field sales" to the three pipeline companies (category "One") which are involved in this case. Commission jurisdiction over these sales is denied. That is the one issue in this case.

As has been pointed out, the Commission, despite its "constant flow" doctrine, admits its lack of jurisdiction over

the independent producer, that is, the producer who does not supply natural gas to its own interstate pipeline system from its own production. So far as Interstate Company is concerned, the jurisdictional question with respect to the "field sales" to the three pipeline companies is the same as though Interstate Company did not own and operate an interstate pipeline system to Baton Rouge. Interstate Company is as to these "field sales" an independent producer, and as such just as much entitled to sell and distribute its gas as any other independent producer, and equally without Commission interference. The Commission does not find and conclude, and it could not support such a finding and conclusion, that Interstate Company constitutes "a single enterprise," separately or collectively, with one or all of the three pipeline companies. The doctrine of "constant flow" from well-head to burner-tip is not contended by the Commission to be applicable to "independent producers"; otherwise, *all* independent producers would be the subject of Commission regulatory control. Such a result, the Commission obviously is eager to avoid. It seems inconceivable that Congress intended, or that the law permits, the Commission to enlarge or reduce its jurisdiction at will by the expedient of applying or not applying the "constant flow" doctrine as suits its purposes from time to time in various situations.

If "constant flow" from the well-head into the channels of interstate commerce and markets were the legal test of jurisdiction, as assumed by the Commission in its findings and order herein, which it is not, then of legal necessity that test would be applied *uniformly*, to pipelines, "to independent producers" and to all other producers, and not if, as and when it suits the purposes of the Commission under particular circumstances, which is and has been the Commission practice. Such is not the structure of our legal and governmental institutions nor the proper or lawful manner of their administration.

In the event the *Commission-proposed* jurisdictional standards had been adopted by Congress in the statutory scheme of Federal regulatory control over electric and gas interstate public utilities, embodied in the Federal Power

Act and the Natural Gas Act, then the asserted Commission jurisdiction over the "field sales" of Interstate Company here in question would be lawful instead of lawless. Had the Congress so intended, there would have been no occasion whatever to reject the Commission draft, for that draft had been built to order for that very purpose.

Moreover, whatever misconceptions heretofore may have existed, that the Commission's "constant-flow" theory was the foundation and measuring rod as a matter of law for the jurisdictional determination of what constitutes transportation and sale for resale, *in* interstate commerce, now have been wiped out by this Court in *Connecticut L. & P. Co. v. Federal Power Commission, et al., supra.*

The Commission, nevertheless, proceeded to construe and apply the Natural Gas Act, as well as the Power Act, precisely as though the jurisdictional "limitations" contained in each of the two statutes in question had not been imposed by Congress. It has administered the Gas Act on the theory that purely *local* transactions and activities, such as production, gathering and field sales, which may be thought to "affect" interstate commerce, or to be in the "flow" or "current" of commodities which ultimately, through others, enters into interstate commerce, are subject to its jurisdiction.

This Court, in *Connecticut L. & P. Co. v. Federal Power Commission, supra,* drew in issue a similar misconstruction or disregard of "the jurisdictional test" imposed by Congress in the Federal Power Act, and on that ground reversed that case.

In this case, the Commission considered irrelevant and ignored "the limitations" on its jurisdiction imposed by Congress in the Gas Act, and substituted therefor the "constant flow" concept of jurisdiction expressly *rejected* by Congress in the enacted statute. Here then is just as clear a departure from the controlling and "correct rule of law" as this Court held required reversal in the *Connecticut* case.

However, the Commission seeks to buttress its asserted jurisdictional authority over such "field sales" by the following argumentative statement in its opinion: "In resisting

regulation by the Louisiana Public Service Commission, the Interstate Natural Gas Company successfully contended in a Federal Court that over 99% of its total sales of gas, which include sales made to the three pipeline Companies, were sales in interstate commerce and beyond the reach of the Louisiana Commission. *(Interstate Natural Gas Co. v. Louisiana Public Service Commission,* 33 F. Supp. 50; 34 F. Supp. 980.) Interstate does not deny that the sales of natural gas to the three pipeline Companies constitute sales of natural gas in interstate commerce for resale * * *." *(R. V. 1, p. 60.)*

There are several obvious answers to this Commission contention. In the cases cited, the question of the scope of Federal regulatory authority under the Natural Gas Act was not in issue or adjudicated. Nor could that question be resolved by ascertaining and delineating the extent of state control, either before or after the passage of the Act. *(People's Natural Gas Co. v. Federal Power Comm.,* 127 F. (2d) 153; *Illinois Natural Gas Co. v. Central Illinois Public Service Co.,* 314 U.S. 498, 506, Note 4, 62 S.Ct. 384, 387.) Furthermore, it is of no legal consequence what the Interstate Company contended or admitted in the proceedings in question, or otherwise. The jurisdiction of the Commission, whatever the extent thereof, is measured by the Congressional grant of authority in the Natural Gas Act. It is, of course, elementary that jurisdiction over a subject matter cannot be created by consent, admission, default or estoppel. Additionally, the Federal District Court in Louisiana (34 F. (2d) 980), held (whether correctly or erroneously, is not here important) that Interstate Company "is not subject to the jurisdiction of the Public Service Commission of the State," predicated upon numerous findings and conclusions of law, any one of several of which was amply sufficient to support the judgment rendered by the three-judge District Court. It is to be observed also, that Interstate Company was then, as now, clearly engaged in "sales of natural gas in interstate commerce for resale" through its Baton Rouge interstate pipeline system, yet the action of the Louisiana Commission in seeking to collect expenses of investigating, fixing and regulating rates was not limited to intrastate operations

and activities and which did not "affect" or burden interstate commerce. See *Kentucky Natural Gas Corporation v. Public Service Comm.*, 28 F. Supp. 509, 513; 119 Fed. (2d) 417; *Ingelo, Director, etc. v. Morf, et al.*, 300 U.S. 290, 294-295, 57 S.Ct. 439, 441-442.

The cases also incidentally cited and referred to in the Commission opinion *(Public Utilities Comm. v. Attleboro Steam & Electric Co.*, 273 U.S. 83, 47 S.Ct. 294; *Missouri v. Kansas Natural Gas Company*, 265 U.S. 298, 44 S.Ct. 544; *Illinois Natural Gas Company v. Central Illinois Public Service Company*, 314 U.S. 498, 62 S.Ct. 384; *Federal Power Commission v. Natural Gas Pipeline Company*, 315 U.S. 575, 62 S.Ct. 736; *Kentucky Natural Gas Corporation v. Public Service Commission*, 28 Fed. Supp. 509, 119 Fed. (2d) 417, *(V. 1, p. 61, footnote)* in support of its assumption that the local "field sales" of Interstate Company to the three pipeline companies are "subject to the Act," are all decisions in which there was *in fact* transmission to and beyond state lines *actually participated in by the company held to have been engaged "in interstate commerce."*

The *Attleboro* and *Kansas Natural Gas Company* cases, upon which the Court of Appeals rested its opinion and judgment of affirmance herein, are considered fully later herein.

In the *Natural Gas Pipeline Company* case, the Natural Gas Pipeline Company and its affiliate the Texoma Natural Gas Company were held to be "engaged in business as a single enterprise" from the production of natural gas in the Panhandle Field in Texas over and through "their own pipeline in interstate commerce to Illinois." In the *Illinois Natural Gas Company* case, the Panhandle Eastern Pipe Line Company and its wholly-owned subsidiary, Illinois Natural Gas Company, were found and held to be "operated as a single system for the production, gathering, transportation and sale in interstate commerce of natural gas" *(In the Matter of Panhandle Eastern Pipeline Company*, 3 F.P.C. Rep. 273, 277, 45 P.U.R. (n.s.) 203, 207-208). In the *Kentucky Natural Gas Corporation* case, it was found and held that the extensive system of interstate pipelines owned and operated by that company, "from which gas is wholesaled under high pressure to distributing companies and utilities,

is an interstate facility through which gas flows into Kentucky from other states and from Kentucky into other states; that as such it is not subject to the powers of the State Commission" of Kentucky.

The operations in all of the cases referred to were *unitary operations of a single enterprise*, and in all such cases the interstate transmission and sale by the companies in question, constituting the single enterprise, was an uncontroverted actuality. In connection with the "field sales" here in question, the issue is whether Interstate Company in law, although not *in fact*, is engaged *in* interstate commerce. Obviously then, the decisions in question do not enable the Commission simply to label such *local* operations of Interstate Company as transactions *in* interstate commerce. There is no record support for such conclusion.

The reach of the Commission for power manifestly greatly exceeds its lawful grasp.

II.

THE COURT OF APPEALS CONCEPT OF COMMISSION JURISDICTION HEREIN IS NOT EMBODIED IN THE NATURAL GAS ACT.

The Court of Appeals neither noticed nor discussed the Commission theory of "constant flow" as the foundation and measure of the asserted Commission jurisdiction herein. That Court veered off into another theory of jurisdiction which we now examine.

The opinion of the Court below is predicated on the easy assumption, several times repeated, that every operation and activity which Congress in any way could have incorporated into the broad and sweeping concept of "interstate commerce" under the constitutional grant to the Federal government of authority over "commerce * * among the several states," was incorporated into the plan of Federal regulatory control embodied in the Natural Gas Act *(R. V. 2, pp. 913-914, 915, 917-918)*. Such is not fact, as disclosed by the Act and the decision of this Court in the *Connecticut* case, *supra*. In support of its basic assumption, so indulged, the Court of Appeals cited the cases of *Missouri v. Kansas*

Natural Gas Co., 265 U.S. 298, 44 S.Ct. 544, and *Public Utilities Comm. v. Attleboro Steam & Electric Company*, 273 U.S. 83, 47 S.Ct. 294 *(R. V. 2, pp. 914, 915, 917, 918)* and collaterally *Peoples Natural Gas Co. v. Federal Power Comm.*, 127 F. (2d) 153 *(R. V. 2, pp. 915, 916)*.

As stated by the Court *(R. V. 2, p. 917)*, "The basic purpose of the present legislation is to occupy this field (Note: referring to the *Attleboro* and *Kansas Gas* cases) in which the Supreme Court has held the States may not act."[13]

The question here is the scope and reach of the statutory terms "transportation * * * *in* interstate commerce" and "sale *in* interstate commerce * * * for resale," which are the limits of Commission authority under the Gas Act and under the Power Act, the jurisdictional provisions of the two enactments admittedly being in parallel.

The Court of Appeals undertook to find the answer in the *Kansas Gas* and *Attleboro* cases. Since this is the "field" which Congress declared it proposed "to occupy" and has occupied, it is evident that the effective exercise of Federal control in that area did not require utilization of the rejected Commission "flow" theory. However, there are no findings by the Commission herein to support any concept of jurisdiction over the field sales here in question except "the flow" theory *(R. V. 1, pp. 82-83)*. Nor is there any evidence in the record which would support findings on any other theory. Had there been any other possible evidentiary foundations for jurisdiction, it must be conceded that the Commission (which is fully cognizant of the legislative history of both the Gas Act and the Power Act and of the wide difference in meaning between the language as drafted and proposed by it and as enacted by Congress) would have made findings accordingly.

This leads us to consider what evidentiary foundations and therefore, what Commission findings would be essential

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13. Report of Interstate Commerce Committee of the Senate, adopting Report of House Committee on Interstate and Foreign Commerce, Senate Report No. 1162, 75th Cong., 1st Sess., August 9, 1937, on H.R. 6586 (originally H.R. 4008); Connecticut L. & P. Co. v. Federal Power Comm., supra, 324 U.S. at pages 525-527; 65 S.Ct. at page 754.

to bring this case into the "field" of the *Kansas Gas* and *Attleboro* cases. If such evidence and such findings were necessary, the Court had no authority to assume the requisite evidentiary facts, nor was it "authorized under *Section 19(b)* to make findings and substitute them for those of the Commission" (*Colorado-Wyoming Gas Co. v. Federal Power Comm.*, 324 U.S. 626, 634, 65 S.Ct. 850, 854).

What then were the factual and legal situations involved in the *Kansas Gas* and *Attleboro* cases?

In *Missouri v. Kansas Natural Gas Co.* (1924), 265 U.S. 298, 305-7, 44 S.Ct. 544, 544-5, the facts as stated by this Court were as follows:

> "These cases were consolidated for argument. *They present for decision the single question whether the business of the Kansas Natural Gas Company, hereinafter called the Supply Company, consisting of the transportation of natural gas from one state to another for sale,* and *its sale and delivery, to distributing companies, is interstate commerce, free from state interference?*
>
> "The facts necessary to be considered in reaching a conclusion are, shortly, as follows:
>
> "The Supply Company is a Delaware corporation, *engaged in producing and buying natural gas* mostly in Oklahoma but some in Kansas, and, by means of pipe lines, transporting it into Kansas and from Kansas into the state of Missouri, and in each state selling and delivering it to distributing companies, which then sell and deliver it to local consumers in numerous communities in Kansas and Missouri. The gas originating in Kansas is mingled for transportation in the same lines with that originating in Oklahoma. The pipe lines are continuous from the wells to the place of delivery.
>
> * * * * *
>
> "The business of the Supply Company, with an exception not important here, is wholly interstate. * * *"

> "The question is controlled by familiar principles. Transportation of gas from one state to another is interstate commerce, and the sale and delivery of it to the local distributing companies is a part of such commerce. * * *". (Emphasis added.)

Here then, with respect to the broad issue of "interstate commerce," we have a *single company* "engaged in producing and buying natural gas, mostly in Oklahoma, but some in Kansas, and by means of pipelines" belonging to it, *in fact* transporting that gas from Oklahoma and Kansas into Kansas and Missouri, and, *after such interstate transportation, in fact,* selling the gas to distributing companies for resale in the states of destination. Such a state of facts presented the issue, as this Court observed, "in its simplest form and, if the claim of state power (i.e. to regulate the rates of sale by the Interstate Company to the distributing companies in the states of destination) be upheld, it is difficult to see how it could be denied in any case of interstate transportation and sale of gas." The case at bar is altogether in a different category. Here Interstate Company *admittedly (R. V. 1, pp. 82-83)* does not *in fact* transport natural gas across any state line nor does it *in fact* sell any of the gas here involved after interstate transmission. Moreover, there are no findings of any facts sufficient to make this case parallel the *Kansas Gas* case, because on the record no such findings could be made. So, this case is no part of that carefully defined "field" which Congress undertook to and did "occupy."

The *Kansas Gas* case, repeatedly cited by the Court of Appeals therefore is no authority, in fact or in law, for the conclusion of that Court: "That they (i.e. the field sales here in question) are sales in interstate commerce, we think is settled by the authorities" *(R. V. 2, pp. 913-914, 915, 917, 918).* As applied to this case, such broad conclusion necessarily implies that *within the terms of the Gas Act, and on the facts of this record,* the local field sales here involved embark Interstate Company directly into "interstate commerce." How and why, that Court does not disclose.

The case of *Public Utilities Comm. v. Attleboro Steam & Electric Co.* (1927), 273 U.S. 83, 47 S.Ct. 294, came to this Court on writ of certiorari to the Supreme Court of Rhode Island (1925), 46 R.I. 496, 129 Atl. 495. It is important that this Court consider the basic facts there involved, which are more fully stated in the opinion of the Supreme Court of Rhode Island than in the opinion of this Court, as follows:

> "The facts, so far as essential to the present inquiry, are as follows: *The Attleboro Company supplies electricity for public and private use in Attleboro, Mass.* The respondent, Narragansett Electric Lighting Company (hereinafter Narragansett Company), a Rhode Island corporation, is engaged in a general electric lighting, heating, and power business.
>
> "May 8, 1917, a contract was made by Narragansett Company, party of the first part, with two Massachusetts corporations, Attleboro Company, party of the second part, and *Seekonk Electric Company* (hereinafter Seekonk Company), party of the third part. The Narragansett Company agreed to sell to the Attleboro Company for a period of 20 years all the electrical energy used by the Attleboro Company and supplied to its customers in the city of Attleboro; such electrical energy was to be delivered at the state line between Seekonk, Mass. and East Providence, R. I., and to be metered on the transformers of the Attleboro Company at its generating plant in Attleboro; *the Seekonk Company agreed to secure the necessary rights of way through Seekonk and build therein a transmission line from the point of delivery at the state line to the boundary line between Seekonk and Attleboro, and there connect with the transmission line to be built by the Attleboro Company to connect with its station in Attleboro. The Narragansett Company agreed to build the transmission line for the Seekonk Company,* the latter to pay therefor, however, only the actual cost of material and labor and such other costs as would be considered assets to capitalize by the Massachusetts board of gas and electric light commissioners, the cost to the Seekonk Com-

pany in no event to exceed $4,500 a mile. A similar provision for construction was made with the Attleboro Company for its transmission line. The Narragansett Company agreed to pay annually to each of the companies 15 per cent. of the amounts paid by each to the Narragansett Company for such construction, and in addition to pay the Seekonk Company annually 15 per cent. of any additional expenditures for additions or changes in its lines. *The Attleboro Company agreed to furnish the necessary transformers, etc., at its station to receive the electric current, and the Narragansett Company agreed to pay the Attleboro Company $1,750 annually for the operation by the Attleboro Company of the receiving station. The Narragansett Company agreed to install and maintain as its property and at its expense meters on the transformers at the station of the Attleboro Company to measure and determine the amount of current received and to be paid for by said company.*

* * * * *

"The Attleboro Company agreed to retain and maintain its present generating station and machinery except its present engine driven units, and that the Narragansett Company at any time at its own expense might use the same for generating and supplying electrical energy to the Attleboro Company.

"*The Narragansett Company guaranteed to the Attleboro Company that the Seekonk Company would promptly and properly perform its contract obligations and to indemnify the Attleboro Company for any loss suffered by it because of any breach of the contract by the Seekonk Company.*

"May 14, 1917, the Narragansett Company filed with the Commission schedule No. 68, setting out the rate and general terms of the contract, and an application that said rate be approved as a special rate under section 42, Public Utilities Act (c. 795, P.L. 1912). May 23, 1917, the Commission made an order authorizing the Narragansett Company to grant a special resale rate to the Attleboro Company at the

state line in accordance with schedule No. 68. The parties proceeded to carry out the contract, and the Narragansett Company is still supplying electrical energy to the Attleboro Company. May 7, 1924, the Narragansett Company filed with the Commission schedule No. 125, setting out a rate for service to the Attleboro Company materially higher than the rate specified in the contract and schedule No. 68. At the solicitation of the Narragansett Company, the Commission, on its own motion, ordered an investigation and public hearing upon the propriety of the proposed change of rate, and directed that notice thereof be given by mail to the two companies. The Attleboro Company appeared at the hearing and made objection to the jurisdiction of the Commission. This objection was overruled, and a hearing was had on the merits of the proposed change. January 21, 1925, the Commission made an order, No. 876, to the effect that the contract rates were insufficient, unjustly discriminatory, and in violation of the Public Utilities Act; that the increased rates in schedule No. 125 were just and reasonable, and ordered that they should become effective February 1, 1925. *The Attleboro Company challenges this order, and claims it is unlawful and void on various grounds; the principal and decisive objection, in our judgment, is that said order is an improper interference by the state with interstate commerce.*

* * * * *

"The sale and transportation of electricity generated in one state, *and conveyed directly to a purchaser in another state* is interstate commerce." (Emphasis added.)

The foregoing facts disclose, *in fact* and without question, *an affiliate or control relationship* between the *Narragansett Company* and the *Seekonk Company. The Narragansett Company transmitted* the electric energy there in question from "the generating station of the Narragansett Company on the Providence River," *made delivery* thereof "at the state line between Seekonk, Mass. and East Provi-

dence, R. I." to the Seekonk Company, and the Seekonk Company then transmitted the energy in Massachusetts on a transmission line built for that Company by the Narragansett Company "to the boundary line between Seekonk and Attleboro," and there connected "with the transmission line to be built by the Attleboro Company to connect with its station in Attleboro." The Narragansett Company "guaranteed to the Attleboro Company that the Seekonk Company would promptly and properly perform its contract obligations * * *." Finally Narragansett Company installed and maintained its own meters "on the transformers at the station of the Attleboro Company to measure and determine the amount of energy received and to be paid for by said company."

Here then is interstate transmission *in fact* by the Narragansett Company and the Seekonk Company which the Narragansett Company controlled. After such interstate transmission from "the generating plant of the Narragansett Company on the Providence River," in Rhode Island "to the boundary between Seekonk and Attleboro," in Massachusetts, the metering, the sale and the delivery of the electric energy, *in fact*, are made by Narragansett Company directly to the Attleboro Company at the transformers of that Company at Attleboro, Massachusetts.

Such is the *Attleboro* case, the "field" which also we are told is "occupied" by Federal regulatory control, under the Power Act and the Gas Act. None of the basic facts there present are found by the Commission to be present in this case, nor could they be found on the record in this case. In the *Attleboro* case the Narragansett Company, acting directly and through its own controlled creation, the Seekonk Company, *actually* transmitted to, and delivered and sold (on the basis of meter readings at Attleboro), the contracted electric energy at Attleboro, Massachusetts.

Here, as the Commission expressly found:

> "*Interstate*, as an established course of business, *is engaged in the transportation, sale and delivery of natural gas purchased, produced and gathered in Monroe Field, Louisiana*, to Mississippi River Fuel Cor-

poration and Southern Natural Gas Company, *at a point near Perryville in the State of Louisiana,* and to United Gas Pipe Line Company for the account of Memphis Natural Gas Company *at a point near Guthrie in the State of Louisiana.*" (Emphasis added.)
(Comm. Finding No. 7, R. V. 1, p. 82).

Both the "point near Perryville" and the "point near Guthrie" where the Commission found "sale and delivery" is made, are in the Monroe Field, Louisiana.
(R. V. 2, Ex. 5, 6, 42.)

Thus each "sale and delivery" by Interstate Company at the points stated is a completed transaction, entirely consummated.

This Court is aware of the fact that the local field "sale and delivery" of natural gas by Interstate Company to each of the three interstate pipeline companies took place BEFORE *any interstate transportation and the subsequent sales for resale "in states other than Louisiana" by the respective interstate pipeline companies (Findings Nos. 7, 8). The Court also will observe that the "sale and delivery" of natural gas and electric energy involved in the Kansas Gas and Attleboro cases took place* AFTER *interstate transportation, and that in each case the "sale and delivery" in the state of destination was made by the company which in fact engaged in the interstate transportation of the natural gas and electric energy in question from the states of origin.*

The Commission's Finding No. 7 forecloses completely the fact of any actual interstate activity of any kind by Interstate Company in connection with the field sales in question. Yet in the *Attleboro* case, upon which the Court of Appeals repeatedly relied, the *actual* interstate activities and operations by the Narragansett Company and its controlled affiliate were the crux of the whole matter from which *facts* the general legal conclusion of "interstate commerce" necessarily followed.

The opinion of this Court in the *Attleboro* case (273 U.S. 83, 47 S.Ct. 294) of legal necessity was predicated upon the record in that case made before the Public Utilities Com-

mission of Rhode Island. The order of that Commission was reviewed and reversed by the Supreme Court of Rhode Island, which reversal was affirmed in this Court. This Court extensively reviewed the *Kansas Gas Company* case and concluded "It is clear that the present case is controlled by the Kansas Gas Co. Case" (273 U.S. 83, 89, 47 S.Ct. 294, 296). In discussing the *Kansas Gas Company* case and upon the facts there involved, this Court observed "that in the sale of gas in wholesale quantities, not to consumers, but to distributing companies for resale to consumers, *where the transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end*"—as by The Kansas Natural Gas Company and similarly by The Narragansett Company, the only situations then under judicial consideration,—"'the paramount interest is not local but national, admitting of and requiring uniformity of regulation.'" The foregoing, of course, is not "the flow" theory of the Commission rejected by Congress in 1935 and 1938 but, nevertheless, applied herein in 1943. Congress, in enacting the Power Act and the Gas Act, had no such misconception of the *Kansas Gas Company* and *Attleboro* cases (see the *Connecticut* case), for if so "the flow" concept would not have been rejected in the two Acts as enacted.

Thus the factual and legal basis upon which the *Attleboro* case is laid is the *actual*, not synthetic, transportation across state lines and the *actual*, not synthetic, subsequent delivery and sale in the state of destination, all by the same or an affiliated or controlled enterprise. As in the *Kansas Gas Company* case, the entire operation was single and *unitary in fact* in the *Attleboro* case.

In *Peoples Natural Gas Company v. Federal Power Comm.*, 127 F. (2d) 153, 155, 156, 158, Peoples Natural Gas Company admittedly was "an affiliated company" to New York State Natural Gas Corporation. Peoples Company sold natural gas in Pennsylvania to its affiliate, the New York Company, which immediately transported such gas into the State of New York, where it made sale thereof to others for resale. Such were the facts, as stated by the Court in that case. On these facts, the Commission (2 F.P.C. 1017) and Court of Appeals considered and treated

the combined operations of the two companies in Pennsylvania and in New York as a single affiliated enterprise, which is the *Attleboro* case.

That Court of Appeals insisted also that the statutory language "sale *in* interstate commerce," used in the Gas Act, included "sale *for* interstate commerce," the term of delineation of jurisdiction used in certain other federal statutes referred to in that Court's opinion. The Court's insistence, however, is not supported by anything except its own *ipse dixit*.

The references made in that opinion to several cases arising under various other acts of Congress, such as the Tobacco Inspection Act, the Agricultural Marketing Agreement Act of 1937, and the Sherman Anti-trust Act, add nothing, for all of such decisions were dependent upon the scope of the statutory authority involved in the particular enactment. Examination of the language of such acts and other similar acts discloses nothing similar in structure, in language or in intent to the Power Act and the Gas Act. See footnote 4, *ante*.

Separate, distinct, unrelated and non-affiliated companies do not become welded into a single or common interstate enterprise, *within the meaning and terms of the Power Act or the Gas Act*, merely because, *as here*, of the contract relationship of vendor and purchaser which is fully consummated *in the state of origin* and even though the local vendor knows that the purchaser thereafter will transport and sell the electric energy or natural gas so locally purchased in interstate commerce for resale. Constructive participation of the local vendor in the subsequent interstate transportation and sale for resale by the purchaser was not involved in the two cases under consideration (*Kansas Gas* and *Attleboro*). Such constructive legal participation could arise only under the Commission "flow" theory, which is not the law of the land, as embodied in the Power Act and the Gas Act. As we have shown, even the Commission is eager to concede that "independent producers," so-called, are not fastened into interstate commerce by the terms of the Gas Act. What is meant by the phrase "independent producer," we are not advised by the authoritative Commission spokesman. It is

evident, however, that Interstate Company is not considered by the Commission to be an "independent producer," as to whom it is said "*The Commission, of course, has no jurisdiction over the independent producer and cannot regulate the rates at which he sells gas to the pipeline company.*"

The only circumstance that possibly can distinguish Interstate Company from other producers of gas, who sell natural gas in the field of origin to an interstate pipeline, is not a difference in knowledge, as between producers, as to where the gas so sold is to be transported by the pipeline, and how sold by the purchaser after such transportation by it, but the bare fact that Interstate Company, aside from and independently of the local field sales here in question, is a "natural gas company" under the Act. Such fact is immaterial and without legal significance (*Canadian River Gas Co. v. Federal Power Comm.*, 324 U.S. 581, 588, 65 S.Ct. 829, 833; *Panhandle Eastern Pipe Line Co. v. Federal Power Comm.*, 324 U.S. 635, 641-642, 65 S.Ct. 821, 825).

Nor do the findings, opinion and order of the Commission or Court of Appeals herein predicate jurisdiction over such field sales, upon the fact that Interstate Company, separate from, independent of and disassociated from the sales here under consideration, owns and operates an interstate pipeline system, that is, the one to Baton Rouge (*R. V. 1, pp. 57-80, 81-86*).

It is common knowledge that virtually every field sale of natural gas by a producer is made to a pipeline company, known by the vendor to be engaged in "the transportation of natural gas *in* interstate commerce" and "the sale *in* interstate commerce of natural gas for resale" (See *Connecticut L. & P. Co. v. Federal Power Comm.*, 324 U.S. 515, 519-521, 65 S.Ct. 749, 751, 752).

This case and the decision (cited by the Court of Appeals, *R. 2, p. 913*) of *Cities Service Gas Company v. Federal Power Comm.*, 155 F. (2d) 694, now pending in this Court on application for certiorari (No. 556 October Term 1946) together develop the actual pattern of the inevitable and ultimate reach of the Commission for power over all activities of the natural gas industry. Whatever purported con-

struction of *Section 1(b)* of the Gas Act is indulged by Commission or court, the controlling and irresistible facts are, that: The Act contains no affirmative grant of any regulatory authority whatever over "the production or gathering of natural gas"; and it does contain a direct affirmative exclusion of such "production or gathering" from the provisions thereof. Moreover, the jurisdictional theories of Commission and Court of Appeals that all activities however local, including "production or gathering" were within the coverage of the Act, since they were or might be in the "flow" of commerce or "affect" directly or indirectly "commerce * * * among the several states," are directly contrary to the Act, as that law deliberately was written and enacted by Congress. The Congress, as has been pointed out, *supra,* was aware of and in fact fully considered all such theories and concepts of jurisdiction. It rejected them, in the exercise of its exclusive legislative prerogative in the matter. The authority sought, but expressly withheld by Congress, is non-existent so far as the Commission is concerned. Under the circumstances the attempted exercise thereof is contrary to law, whether with or without judicial approbation and approval.

CONCLUSION.

The "end result," therefore, of the Commission order and the opinion and judgment of the Court of Appeals would be to subject every producer and vendor of natural gas, who sells the same locally in the field of production to an interstate pipeline company, to the rate-regulatory jurisdiction of the Commission. This conclusion beyond question is aside from and beyond the clear Congressional intent and the specific affirmative and negative jurisdictional provisions of *Section 1(b)* of the Act.

The Commission is not at liberty, under any principles of orderly and ordered government, to apply, by variant statutory construction, one test of jurisdiction to one producer and another test of jurisdiction to another, as suits its purpose from time to time in situations which are essentially identical. Such, however, is the present course of Commission policy and procedure, to which the Court of Appeals

now has given its approval. The Act, in its delegation of regulatory authority is not elastic. Jurisdiction arises, if at all, under a fixed universal statutory formula, applicable to all alike. Neither the Commission nor the courts possess any discretion whatever in the matter.

It is urged with deep conviction that the lawful rights and freedoms of the many persons represented by these *Amici Curiae,* as well as all other producers of natural gas, are impaired permanently and without redress by the opinion and judgment of the Court of Appeals affirming the order of the Commission herein.

That Court by its action has permitted the Commission to grasp and exercise power and authority which, under law, it does not possess.

The Commission "flow" theory of rate-regulatory jurisdiction over Interstate Company and its sales of natural gas to the three interstate pipelines, fully and completely closed and consummated locally at the respective points of delivery in the Monroe Field, Louisiana, is not consistent with or in conformity with the meaning and terms of the Natural Gas Act.

The Court of Appeals concept of Commission rate-regulatory jurisdiction in this case is contrary to and without support in the findings of the Commission, is contrary to and without factual foundation in the record, and as applied to the local field sales here in question is not within or consistent with the intended and actual scope of Federal statutory control embodied in the Natural Gas Act."

In the *Canadian* case, *supra,* four members of this Court, in the face of the express grant of authority strictly limited to "the transportation" and to "the sale" of natural gas "in interstate commerce" and in the face of the statutory mandate that "the provisions of this Act * * * shall not apply to * * * the production or gathering of natural gas," nevertheless declared that the Act otherwise directly *authorized* the Commission to incorporate all phases of the

14. These infirmities, in the opinion and judgment of the Court of Appeals were presented fully to that Court by Amicus Curiae, upon petition for rehearing herein. (R. V. 2, pp. 930-938).

activities of production and gathering, that is to say, the business, the properties, the facilities, the operations, the revenues, the expenses and the earnings thereof, into and as an inherent and essential part: (1) of the Commission rate base of the regulated activities; (2) of the Commission cost of service including return allocated to the regulated activities; and (3) of the Commission order of rate reduction applicable alone to "the rates and charges" of the regulated activities. Apparently in order to prevent this emasculation of the specific statutory limitations on jurisdiction from appearing to have "given no meaning" whatever to the express statutory language of limitation and exclusion, it was said in the opinion referred to that some of the incidents of mere physical operation, which could not hamper in the slightest the broadest possible exercise of regulatory control, were excluded from Commission authority. Thus *Section 1(b)* was read out of the Act.

The Commission action, procedures and order here under review, into which similarly, directly and specifically are embodied and incorporated all the production and gathering activities of *Interstate* Company, when measured by any candid and forthright appraisal of the reality and substance thereof, are: actual regulation; specific regulation; direct regulation; and the full and complete reach of regulation of all phases of the manifold activities of the business of "production and gathering of natural gas." An affirmative blanket delegation of the most sweeping authority could not have resulted in the exertion in fact of a different, of a greater, or of a more detailed regulation both in form and in substance, than was herein exercised. (See, *Southern Pacific Company v. Interstate Commerce Comm., supra.)*

In the *Canadian* case, five members of this Court, on the other hand, found in the statutory delineation of jurisdiction and in the express exclusion of "the production or gathering of natural gas" from "the provisions of this Act," a withholding and a prohibition of all Commission authority, as stated by Mr. Justice Jackson, over "any direct regulation" of "the production or gathering of natural gas:"

Such then is the judicial record, and from that record it appears that a majority of this Court agreed upon the

principle of law involved, to-wit: the meaning and effect of the statutory exclusion in *Section 1(b)* of the Act, under consideration. Such a concurrence, therefore, was an authoritative determination and governs in all other cases *(United States v. Pink*, 315 U.S. 203, 216, 62 S.Ct. 552, 558).

Accordingly, the order of the Commission and the judgment of the Court of Appeals, being in error, must be vacated and set aside.

Respectfully submitted,

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